

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of	Atty. Docket
BART VAN ROMPAEY ET AL.	FR 030029
	Confirmation No. 3469
Serial No. 10/549,372	Group Art Unit: 2627
Filed: SEPTEMBER 14, 2005	Examiner: SASINOWSKI, A.
Title: REWRITABLE DATA CARRIER INCLUDING UNERASABLE TYPE INFORMATION DEFINING A READ-ONLY AREA (As Amended)	

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Board of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Sir:

Appellants herewith respectfully present a Brief on Appeal as follows, where a Notice of Appeal is concurrently filed:

REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee of record Koninklijke Philips Electronics N.V., a corporation of The Netherlands having an office and a place of business at Groenewoudseweg 1, Eindhoven, Netherlands 5621 BA.

RELATED APPEALS AND INTERFERENCES

Appellants and the undersigned attorney are not aware of any other appeals or interferences which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-13 are pending in this application. Claims 1-13 are rejected in the Final Office Action mailed on June 15, 2009.

Claims 1-13 are the subject of this appeal.

STATUS OF AMENDMENTS

Appellants did not file a Response to a Final Office Action mailed September 14, 2009. This Appeal Brief is in response to the Final Office Action mailed September 14, 2009, that finally rejected claims 1-13.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention, for example, as recited in independent claim 1, shown in FIG 1, and described on page 4, line 16 to page 5, line 10 of the specification, is directed to a data carrier comprising a first area 12 and a second area 13 comprising a rewritable material. The first area 12 is defined as a read-only area by type information recorded on said data carrier in an unerasable way in a type area 11 which is different from the first area 12.

The present invention, for example, as recited in independent claim 12, shown in FIG 1, and described on page 4, line 16 to page 5, line 10 of the specification, is directed to a method of writing on a data carrier comprising writing content in a first area 12 of the data carrier; and after the act of writing, recording, in a type area 11 in an unerasable way, type information that defines the first area 11 as a read-only area. The type area is different from the first area 11.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-4, 8-10 and 12 of U.S. Patent Application Serial No. 10/549,372 are unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,526,019 (Yoshimoto) in view of U.S. Patent No. 5,661,703 (Moribe).

Whether claims 5-6 of U.S. Patent Application Serial No. 10/549,372 are unpatentable under 35 U.S.C. §103(a) over Yoshimoto in view of Moribe and U.S. Patent No. 6,125,089 (Shigemori).

Whether claim 7 of U.S. Patent Application Serial No. 10/549,372 is unpatentable under 35 U.S.C. §103(a) over Yoshimoto in view of Moribe, Shigemori and U.S. Patent No. 7,280,461 (Endoh).

Whether claim 11 of U.S. Patent Application Serial No. 10/549,372 is unpatentable under 35 U.S.C. §103(a) over Yoshimoto in view of Moribe and U.S. Patent Application Publication No. 2004/0044567 (Willis).

Whether claim 13 of U.S. Patent Application Serial No. 10/549,372 is unpatentable under 35 U.S.C. §103(a) over Yoshimoto in view of Moribe and U.S. Patent Application Publication No. 2004/0032813 (Lee).

ARGUMENT

Claims 1-4, 8-10 and 12 are said to be unpatentable under 35 U.S.C. §103(a) over Yoshimoto in view of Moribe.

Appellants respectfully request the Board to address the patentability of independent claims 1 and 12 as well as dependent claim 9, and further claims 2-8, 10-11 and 13 as depending from claims 1 and 12, based on the requirements of independent claims 1 and 12. This position is provided for the specific and stated purpose of simplifying the current issues on appeal. However, Appellants herein specifically reserve the right to argue and address the patentability of claims 2-8, 10-11 and 13 at a later date should the separately patentable subject matter of claims 2-8, 10-11 and 13 later become an issue. Accordingly, this limitation of the subject matter presented for appeal herein, specifically limited to discussions of the patentability of claims 1 and 12, and dependent claim 9, is not intended as a waiver of Appellants' right to argue the patentability of the further claims and claim elements at that later time.

Yoshimoto is directed to an optical disk with two sides for

recording data, and at least one recording area for each side. Each recording area is associated with an attribute which designates whether the corresponding recording area is an area which permits rewriting or an area which does not permit rewriting. Data representing the attribute for the at least one recording area of each side is recorded in a structure management table provided in a predetermined part of the disk of each side. It is respectfully submitted that Yoshimoto does not disclose or suggest a first area being defined as a read-only area by type information recorded on said data carrier in an unerasable way in a type area which is different from said first area," as recited in independent claim 1, and similarly recited in independent claim 12.

(Illustrative emphasis provided)

A disc having a type area which is different from a first area, where the type area includes type information that defines the first area as a read-only area, is nowhere disclosed or suggested in Yoshimoto. Rather, Yoshimoto discloses that data representing the attribute for a recording area is recorded in a structure management table provided in a predetermined part of the disk. There is no indication or suggestion that this predetermined

part of the Yoshimoto disc is different from other recording areas, let alone being different from a read-only area defined by the attribute.

Assuming, arguendo, that Yoshimoto discloses or suggests that data representing the attribute is recorded in a different area that a read-only area defined by the attribute, as correctly noted on page 2 of the Office Action, last two lines, Yoshimoto does not disclose or suggest the "type information recorded on said data carrier in an unerasable way," as recited in independent claim 1, and similarly recited in independent claim 12. Moribe is cited in an attempt to remedy the deficiencies in Yoshimoto.

Moribe is directed to an optical recording medium in which a medium identification code is recorded by using a nonvolatile mark which is formed through irreversible change of a recording film. Recording and reproducing programs reproduce the medium identification code, and encode/decode data based on the reproduced medium identification code.

It is respectfully submitted that the Moribe medium identification code is NOT type information that defines an area as a read-only area. Rather, the Moribe medium identification code is

used to encode/decode data. Further, the Moribe medium identification code is unique for each recording medium, as recited in claims 31-33 of Moribe, for example, and has nothing to do with defining an area as a read-only area.

It is respectfully submitted that Yoshimoto, Moribe, and combination thereof, do not disclose or suggest the present invention as recited in independent claim 1 and similarly recited in independent claim 12 which, amongst other patentable elements, recites (illustrative emphasis provided):

said first area being defined as a read-only area by type information recorded on said data carrier in an unerasable way in a type area which is different from said first area.

A disc including type information recorded in an unerasable way in a type area which is different from a first area defined as a read-only area by the type information, is nowhere disclosed or suggested in Yoshimoto and Moribe, alone or in combination. At best, the combination of Yoshimoto and Moribe merely discloses a disc where data representing the attribute for a recording area of each side is recorded in a management table provided in a predetermined part of the disk, and a unique medium identification

code used to encode/decode data is recorded by using a nonvolatile mark.

Further, Yoshimoto, Moribe, and combination thereof do not disclose or suggest that "after the act of writing recording, in a type area in an unerasable way, type information that defines the first area as a read-only area; wherein the type area is different from the first area," as recited in independent claim 12.

(Illustrative emphasis provided) Page 5, second bullet point, of the Final Office Action alleges that column 6, lines 12-20 of Yoshimoto discloses this feature of recording the type information, in a type area in an unerasable way, after writing the content in the first area. Appellants respectfully disagree and submit that column 6, lines 12-20 of Yoshimoto specifically recites:

With the above arrangement, the host device needs only to provided a single command, e.g., a back-up command. Then, the drive device executes the back-up command by copying the data from one part of the disk to another. In the execution of the command, the attributes of the zones may be altered before and after copying the data. Moreover, the back-up is achieved within a single disk, so that it is not necessary to back-up the data using another disk.
(Emphasis provided)

That is, the attributes are already written or recorded. The

above noted portion of Yoshimoto, namely, column 6, lines 12-20, does not disclose recording the type information after writing the content, as recited in independent claim 12. Rather, this portion of Yoshimoto merely discloses to alter attributes, that are already recorded, before and after copying data. Shigemori, Endoh and Willis are cited to allegedly show other features and do not remedy the deficiencies in Yoshimoto and Moribe.

Accordingly, it is respectfully submitted that independent claims 1 and 12 are allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 2-11 and 13 are also allowable at least based on their dependence from amended independent claims 1 and 12, as well as for the separately patentable elements contained in each of the claims.

For example, claim 9 recites that "the type information include type and location of the first area and the second area." (Illustrative emphasis provided) It is alleged on page 5, second and third bullet items, that column 2, lines 23-25 of Yoshimoto discloses this feature. Appellants respectfully disagree and submit that column 2, lines 23-25 of Yoshimoto specifically recites:

An object of the invention is to provide an optical disk which enables quick indexing of the physical location of the target sector responsive to a given address. (Emphasis provided)

That is, column 2, lines 23-25 of Yoshimoto merely discloses indexing of the location of the target sector, and is completely silent about any type of this target sector. Type information that include type and location of the first and second areas, as recited in claim 9, are nowhere disclosed or suggested in Yoshimoto.

Claims 5-6 are said to be unpatentable under 35 U.S.C. §103(a) over Yoshimoto in view of Moribe and Shigemori.

It is respectfully submitted that claims 5-6 should be allowed at least based on their dependence from independent claim 1.

Claim 7 is said to be unpatentable under 35 U.S.C. §103(a) over Yoshimoto in view of Moribe, Shigemori and Endoh.

It is respectfully submitted that claim 7 should be allowed at least based on their dependence from independent claim 1.

Claim 11 is said to be unpatentable under 35 U.S.C. §103(a)

over Yoshimoto in view of Moribe and Willis.

It is respectfully submitted that claim 11 should be allowed at least based on their dependence from independent claim 1.

Claim 13 is said to be unpatentable under 35 U.S.C. §103(a) over Yoshimoto in view of Moribe and Lee.

It is respectfully submitted that claim 13 should be allowed at least based on their dependence from independent claim 12.


In addition, Appellants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, Appellant reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

CONCLUSION

Claims 1-13 are patentable over Yoshimoto, Moribe, Shigemori,
Endoh, Willis and Lee.

Thus, the Examiner's rejections of claims 1-13 should be
reversed.

Respectfully submitted,

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CLAIMS APPENDIX

1. (Previously Presented) A data carrier comprising a first area and a second area comprising a rewritable material, said first area being defined as a read-only area by type information recorded on said data carrier in an unerasable way in a type area which is different from said first area.

2. (Previously Presented) The data carrier as claimed in claim 1, wherein said first area and said second area are parts of a same layer of said data carrier.

3. (Previously Presented) The data carrier as claimed in claim 1, said data carrier comprising a central part, the first area being nearer to said central part than the second area for recording content by a manufacturer of the data carrier and the second area is for recording data by a user of the data carrier.

4. (Previously Presented) The data carrier as claimed in claim

1, said data carrier comprising a type area comprising said type information recorded by pits and lands.

5.(Previously Presented) The data carrier as claimed in claim 1, wherein said type information is recorded by a frequency modulated wobble.

6.(Previously Presented) The data carrier as claimed in claim 5, comprising a rewritable Compact Disc having a lead-in area, wherein said type information is encoded as Absolute Time In Pre-groove data in said lead-in area.

7.(Previously Presented) The data carrier as claimed in claim 5, wherein said type information is encoded as Permanent Information and Control data.

8.(Previously Presented) The data carrier of claim 1, wherein the type information include location of the first area.

9.(Previously Presented) The data carrier of claim 1, wherein

the type information include type and location of the first area and the second area.

10. (Previously Presented) The data carrier of claim 1, wherein an area of the data carrier having no associated type information in the type area comprises a rewritable area.

11. (Previously Presented) The data carrier of claim 1, wherein content of the read-only area includes an advertisement.

12. (Previously Presented) A method of writing on a data carrier comprising the acts of:

writing content in a first area of the data carrier; and
after the act of writing recording, in a type area in an unerasable way, type information that defines the first area as a read-only area; wherein the type area is different from the first area.

13. (Previously Presented) The method of claim 12, wherein the recording act is performed by adding the type information in a

wobble, and printing a wobbled groove on the data carrier including the wobble.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None